

THE RIGHT TO EQUALITY: ACCESSIBLE SIDEWALK FOR THE DISABLED PEDESTRIAN IN INDONESIA

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ABSTRACT

The lack of the provision of accessible sidewalk for the disabled pedestrian in Indonesia is contrary with the mandate of article 28I paragraph (4) of the 1945 Constitution and sections 101 and 102 of Act Number 8 the Year 2016 about Persons with Disabilities ("Act 8/2016"). It is essential to remember that under section 28I paragraph (4) of the 1945 Constitution, the government recognizes the responsibility to ensure the enjoyment of human right implementation for all people. Besides, Indonesia becomes one of a state which has ratified the Convention on the Rights of Persons with Disabilities. In this stage, it is safe to submit that Indonesia commits to respect, to protect, and to fulfill the human right for its people without discrimination. However, the study found that the disabled pedestrian cannot enjoy its right to access the sidewalk safely and independently. The majority factors are caused by the misuse function of the sidewalk, such as illegal parking area or illegal market which dominantly using the sidewalk; small pavement size for physically disabled, and then the absence of sidewalks in some streets. In Central Jakarta, for instance, the lack of sidewalk can be found nearby Gajahmada Plaza, although, in that area, many blind people live there. Even though the number of accessible sidewalks for disabled pedestrian grow, it is essential to recall the government to take any necessary steps to fulfill the right of the disabled pedestrian to life independently and grant accessible public facility and services, as mandated under article 5 paragraph (1) of Act 8/2016. Therefore, this paper will elaborate on the disabled people's right to equality regarding the availability of accessible sidewalk in Indonesia by presenting the laws and the theories.

Key words: Accessible Pedestrian Facility, Persons with Disabilities, Human Rights, Indonesia

Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support."

(Preamble (j) of CRPD)

"The purpose of the present Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

(Article 1 of CRPD)

INTRODUCTION

Despite the government of the Republic Indonesia ("the government") has ratified the Convention on the Rights of Persons with disabilities ("CRPD") in 2011¹, which highlighting the aim for promoting, protecting, and guaranteeing the implementation of human rights and fundamental freedoms for persons with disabilities and also to those who need more intensive support fully and equally, the government has not yet significantly succeed to ensure disabled people to enjoy their right access the sidewalk fully yet. The study found that in some cities in Indonesia, the sidewalks do not accessible for pedestrians, especially for the disabled because the part of sidewalks are mostly used by the street seller for selling their products and commonly for illegal parking used. In addition, in Jakarta, before it was annuled by the Supreme Court of the Republic of Indonesia ("the Supreme Court") on 18 December 2018, article 25 paragraph (1) of the DKI Jakarta's local regulation Number 8 Year 2007 ("Jakarta Regulation 8/2007") let the Governor to assign some parts of the roads/sidewalks and other public places to be street vendors's business place.²

In this stage, it submits that the spirit to implement the right to enjoy the accessible sidewalk for general people spread widely and this such an awareness start being supported by massive people communities, political figures, and students which consider this action as a form of support to implement their right to enjoy the sidewalk. Although this such an action does not only represent the disabled people interest, the disabled people shall be considered as a part of the community because once the quality standart of living arise, all components of the society will get the affect. Accordingly, this action benefit the disabled people as well. Moreover, the government has renewed the Act Number 8 the Year 2016 about the Person with Disabilities ("Act 8/2016"), which automatically replacing Act Number 4 the Year 1997 that has more concerned on charity based rather than on human right perspective³. The studies reveal that the government recognize the right of pedestrian and has been aware of its responsibility to provide some accessible public services for disabled people, including sidewalk by stipulating all those

¹ Status of Ratification Interactive Dashboard, CRPD, <http://indicators.ohchr.org/>, accessed May, 20th 2019

² The Supreme Court Verdict for the case number 42 P/HUM/2018

³ General Explanation of Act 8/2016, pug-pupr.go.id/_uploads/PP/UU.%20No.%208%20Th.%202016.pdf, accessed May, 20th 2019 at 10.15 am

responsibility and recognition under article 105 of the Act 8/2016 and article 25 paragraph (1) of Act Number 22 the Year 2009 (“Act 22/2009”) about Road Traffic and Transportation.

“each road used for public traffic must be equipped with road equipment in the form of facilities for bicycles, pedestrians and persons with disabilities” (Article 25 paragraph (1) Act 22/2009)

It is essential to bear in mind that there is certain reason on why the principles of human right, such as respect for dignity; no discrimination; human diversity and humanity; equality of opportunity; equality; accessibility; and special treatment and more protection are stipulated under article 2 of Act 8/2016, the law which regulating, accomodating, and respecting about the Person with Disabilities. Thus, by elaborating some findings and discussing this topic, the result will benefit many parties, especially the government as a rule makers to be more active to comprehend many aspect to implement the right to equality for the disabled people for accessing the sidewalks. Moreover, the theme of this writing specifically discuss about disabled people right to access the sidewalks because the articles which are discuss about this topic is merely fewer. In other world, this paper serves to enrich the articles which concern on discussing about disabled people right, especially right to equality in accessing the sidewalks safety.

For the purpose of this writing, there will be 3 sections in this paper, namely introduction, the contents that will be divided into some sub-section, and then the conclusion. The methodology used is that the paper-desk methodology, which means that all data, acts, and academic sources are gained by reading the literature and doing slight passive observations.

The Study Findings

In Surakarta city, which located in The Central Java Province in Indonesia, mostly the sidewalks do not provide the first track for the disabled people, such as a ramp.⁴ In front of the gate Gedhe Market, for instance, the use of sidewalks misuse by becoming a market for the street vendors. Moreover, the guiding blocks do not meet the public services indicators for disabled people. In 2015, the number of disabled people in Surakarta had reached about 1104 people, and it grows annually.

In Manado city, the study found that the surface on the sidewalks at Sam Ratulangi street is not feasible for people with disabilities.⁵ Also, the majority people agreed that the size of the paths are necessary to be widened so that the blind people be able to carry out their day-to-day tasks and be able to facilitate them walk comfortably by not colliding with other pedestrians. As regards to the guided pathway, the study also found that the condition of the current guiding paths is in damaged condition. Thus, the function of the guided pathway cannot work well, and it is not in line with the provisions of technical requirements. Based on therefore, research, the writers elaborate on the criteria of the pedestrian path design. There are two criteria, namely: safety criteria and convenience criteria. In the former, there are five standards, such as the surface has a non-slippery surface, inadequate kanstein conditions, do not have a safety fence, there are no shelter and area for up/down passenger, trees and canopies are not in all segments. The latter one also divides the standards into five categories, namely: having a connecting line which not potentially hurt the pedestrians, the widen base size of the sidewalk, proper guide lane conditions, braille mark

In Semarang city, the study found that there are 11 types of an obstacle for the disable pedestrian, namely: billboards, trees, crossing bridges, guardhouses, telephone boxes, telephone poles, power poles, cars, motorcycles, and street vendors.⁶ The motorcycles parking area is the most inconvenience obstacle that prevents disabled people from accessing the sidewalks. In some cities in Indonesia, changing the paths function as a parking area is standard to view, and it can be found easily in the big cities, such as Semarang city. Following the motorcycles parking area, billboard installation has been considered as the second source that prevents disabled people from accessing the sidewalks safely. Then, there are street vendors which also avoid the disabled people from obtaining their right to access the paths. However, those three obstacles are merely for physically disabled people. Thus, there are many obstacles for disabled people based on the types of disabilities. Further, in the conclusion of the study, the study found that:

1. There are 69,7% of the sidewalks which do not guide lines for the blind people;
2. Lots of the sidewalk's surfaces are up and down, particularly on the entrance of Ahmad Yani Street and Soegijapranata street;
3. Unavailability of appropriate RAM that does not meet the standard at every crossroads. This condition leads the physically disabled people (wheelchair users) to go up to the sidewalks.

In Banda Aceh city, there are 61.000 disabled people in 2013, and the number of disabled people grows to 3,4% each year. However, accessibility for disabled people has not seen yet around Tgk. David Beureueh, which located in the center of the city. The study found that there are different claims between the disabled people and non-disabled people in term of the sidewalk facility function.⁷ The variables in this research involving eight factors, such as availability of infrastructure on the main road nearby Tgk. Daud Berureueh street, security, safety, the ease to reach the destination place, usability, convenience,

⁴ Lelly Nuraviva, Aksesibilitas Penyandang Disabilitas Terhadap Fasilitas Publik di Kota Surakarta,

<https://webcache.googleusercontent.com/search?q=cache:xuGHS67izGEJ:https://ejournal3.undip.ac.id/index.php/jpgs/article/download/19073/18122+&cd=1&hl=en&ct=clnk&gl=id> accessed May, 20th 2019 at 11.37 am

⁵ Adrian Sembor, Pingkan P. Egam, Judy O. Waani, Evaluasi Jalur Pedestrian Bagi Tuna Netra Terhadap Persyaratan Teknis di Koridor Jalan Sam Ratulangi Kota Manado, <https://media.neliti.com/media/publications/64628-ID-evaluasi-jalur-pedestrian-bagi-tunanetra.pdf>, accessed May, 20th 2019 at 2.46pm

⁶ Bayu Arie Wibawa, Ndaru Hario Sutaji, Analisis Penggunaan Jalur Pejalan Kaki Bagi Para Difabel di Kota Semarang, Prosiding Seminar Nasional, <http://prosiding.upgris.ac.id/index.php/lppm2016/lppm2016/paper/viewFile/1208/1207>, access May, 21th 2019.

⁷ Eetty Herawaty, M. Isya, Irin Caisarina, Kajian Penyediaan Aksesibilitas Trotoar Untuk Penyandang Difabel di Kota Banda Aceh Menurut Persepsi Masyarakat (Studi Kasus: Jalan Tgk. Daud Beureueh), <http://www.jurnal.unsyiah.ac.id/JTS/article/view/12418>, access May, 21th 2019

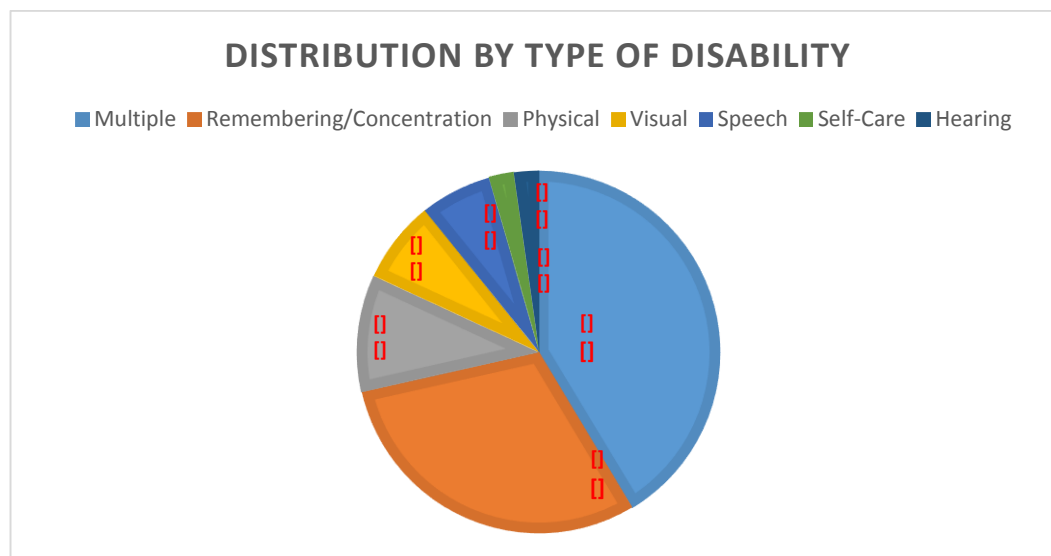
independence, accessibility of disabled paths. In this stage, the non-disabled people do not see there is an issue about the sidewalk facility functions. Meanwhile, disabled people submit the opposite answer. For all factors mentioned above, but the usability, the disabled people agree that no elements meet the standards for them to access their right to access the sidewalks, as a part of public services.

In Central Jakarta, Next to Gajahmada Plaza, there is one-way street which do not provide proper way for pedestrian to access the street safely. Some parts of the street are being used for street vendors, the rests are for illegal parking and the motor vehicles used whilst it is the only way for the pedestrians (non disabled and disabled people) to reach the main road. it safe to submit that the lack of accessible sidewalk provision is common in Central Jakarta. Even if there are sidewalks, mostly the pedestrians are still unable to access it safely and properly due to illegal parking used and street seller vendors dominating the sidewalk function.

Thus, based on findings mentioned above, it is safe to submit that despite there are many recognitions upon the legal system in Indonesia, which stipulating the right of equality for disabled people in terms of accessing the public facilities, the implementation of ensuring the disabled people to access the sidewalks does not run as it is expected. It is also safe to submit that the awareness of government related parties to supervise and control the quality and standart of the sidewalks are aso need to be questioned in this term. It is because constructing the public facilities shall be followed by the idea that everybody must be ensured to access the street safely and properly. Thus, to support the ideal the accessible sidewalk manifestation, the government interference also need to be a part in this plan. By regulating a specific punishment for those who against the law, such as those who intentionally use the sidewalks improperly will be sentenced into a jail. Therefore, the topic in this writing is selected. This paper aims to recall the government to take any necessary steps in order to fulfill the rights to equality of the disabled people so that they are able to access the sidewalks safety and fully without any interrupts.

The Disabled People in Indonesia

In Indonesia, there is no exact data regarding the number of disabled people. Based on the UNESCAP 2015, there are around 8.56% disabled people⁸ which equivalent to 6.008.641 people⁹. Based on the types of disabilities, the table below shows the composition such as:



On the other hand, SUPAS 2015 reveals that for disabled people: blind people, it reaches about 13.221.240 people in Indonesia.¹⁰ In this stage, it is to submit that according to SUPAS 2015 data, the number of blind people in Indonesia is more significant than the information revealed by UNESCAP 2015.

Regarding the right to access public services for the disabled people, the recognition, protection, and guarantee are stipulated under articles 5, 18 (a), 19 (b), and 23 of the Act Number 8/2016. Meanwhile, in the 1945 Constitution, it covers under article 28H paragraph (1) and paragraph (2); article 28I paragraph (2) and paragraph (4). Accordingly, before the domestic law in Indonesia, disabled people have the same right as the others to enjoy its human right implementation without any discrimination action. The government's responsibilities in terms of fulfilling the disabled people's right are clear under domestic law.

⁸ Ishak Salim, Membaca Data Disabilitas Indonesia melalui Supas 2015: 'Penyandang Disabilitas' atau 'Orang Dengan Beragam Kesulitan'? <https://www.solider.id/baca/4280-membaca-data-disabilitas-iindonesia-supas-2015-penyandang-disabilitas-orang-beragam> accessed May, 21th 2019 pukul11.52 am

⁹ Disability at a Glance 2019, UNESCAP, https://www.unescap.org/sites/default/files/SDD%20Disability%20Glance%202015_Final.pdf, p. 122-123 accessed May, 21th 2019 at11.52 am

¹⁰ Badan Pusat Statistik, Penduduk Indonesia; Hasil Survei Penduduk Antar Sensus 2015, https://bps.go.id/website/pdf_publicasi/Penduduk-Indonesia-hasil-SUPAS-2015_rev.pdf. Accessed May, 21th 2019 at 12.47 pm

However, for implementing and ensuring the enjoyment of human rights for disabled people, it is quite challenging. It is because, for a long time, society has considered disabled people as a charity object. It is safe to submit that it is clear that disabled people are categorized as a vulnerable group of people, but at the same time, the majority used to assume that the disabled people often lack skills and knowledge. In other words, their group is generally not encouraged to develop; they are not considered valuable members of their community, and many remain housebound, uneducated, and unskilled. Also, disabled people are more often considered an embarrassment.¹¹ In 2002, there was an article which reported about the death of a man with an intellectual disability who had been placed in stocks like a prisoner at the back of his parents' home in Cilacap, Java.¹² Further, the writer in that newspaper seemed to support the family had done by claiming that imposing him for preventing him from harming himself and other people around him. However, from time to time, the people stereotype about the disabled people be changed because many groups which concern this issue attempt to educate the society about the culture of people with disabilities.

The following is the list of words to refer to people with disabilities appropriately:¹³

Impairment	Out-Dated Language	Respectful Language
Blind or Vision Impairment	Dumb, Invalid, Blind Freedy	Blind/Vision Impaired; Person who is blind; Person with vision impairment
Deaf or Hearing Impairment	Invalid, Deaf-and-Dumb, Deaf-Mute	Deaf or hearing impaired, Deaf person, Person with hearing impairment
Speech/Communication Impairment	Dumb, "one who talks bad"	Person with a speech/communication impairment, Speech impaired
Learning Disability	Retarded, Slow, Brain-Damaged, "Special ed"	Learning disability, Cognitive disability, Person with a learning or cognitive disability
Mental Illness	Hypersensitive, Psycho Crazy, Insane, Wacko, Nuts, Mad	Person with a psychosocial disability, Persons with psychiatric disability, Persons with mental illness
Mobility/Physical Disability	Handicapped, Physically Challenged, "Special", Deformed, Cripple, Gimp, Spastic, Spaz, Wheelchairbound, Lame	Wheelchair user, Person with mobility or physical disability
Intellectual/Cognitive Disability	Retard, Mentally retarded, "Special ed"	Person with an intellectual/cognitive/developmental disability
Short Stature	Dwarf, Midget	Person of short stature
Health Conditions	Victim, Someone "strike with" a disability (i.e. "someone stricken with cancer" or "an AIDS victim")	Someone "living with" a specific health condition (i.e. "someone living with cancer or AIDS")

Equality Principle

Equality Principle for the disabled people becomes one of principle that must meet by the government in term of implementing and fulfilling the disabled people right. As a part of human right for the disabled people, this submission is stipulated under article 2 paragraph (g) of Act Number 8/2016. In its explanation, what equality meant by this is that the condition, in which the various systems in society and the environment, such as shipping, information, and documentation activities, can accommodate all people, including persons with disabilities.

In this paper, it submits that providing accessible sidewalks for all people, including persons with disabilities is a part of the government's responsibility and it is a part of a right for the disabled people to be fulfilled. In this stage, providing accessible sidewalks for disabled people must meet the standard and come across the difficulties of the disabled people to access the paths. It is safe to submit that understanding the sidewalk users need is a necessary and vital step to be understood by the government. It is because the sidewalk users are not the same individuals. In other words, the disabled people have different abilities and different conditions: their skills in balance, cognition, coordination, endurance, flexibility, hearing, problem-solving, strength, vision, agility, and walking speed¹⁴; to access the sidewalk system. In term of fulfilling the disabled people right to access sidewalks, it submits that the government shall be aware of these varieties of differences. Thus, it will benefit the disabled people for accessing the paths because of the design of the sidewalks following the need of the disabled people.

¹¹ Janene Byrne, Disability in Indonesia, Inside Indonesia, <https://www.insideindonesia.org/disability-in-indonesia>, accessed May, 21th 2019 at 13.46 pm.

¹² Tsaputra Antoni, Potrayals of People With Disabilities in Indonesian Newsprint Medua (A Case Study on Three Indonesian Major Newspaper), IJDS 2016 Vol. 3 No.1, pp. 1-11, https://www.academia.edu/29968636/PORTRAYALS_OF_PEOPLE_WITH_DISABILITIES_IN_INDONESIAN_NEWSPRINT_MEDIA_A_CASE_STUDY_ON_THREE_INDONESIAN_MAJOR_NEWSPAPERS, accessed May, 22th 2019 at 12.11 pm.

¹³ Ibid, p. 8

¹⁴ U.S. Department of Transportation Federal Highway Administration, Accessible Sidewalks and Street Crossings: an informational guide, http://www.bikewalk.org/pdfs/sopada_fhwa.pdf, accessed May, 22th 2019

Information to pedestrians

In this stage, it submits that the right to access information is also a part that must be fulfilled by the government to ensure the right to equality for the disabled people to access the sidewalks. The sidewalk for the disabled people must provide the information which can accommodate and fulfill the disabled people need to walk. The disabled pedestrian information includes pedestrian signage, accessible pedestrian signals (APS) – audible tones, verbal messages, vibrotactile information, and detectable warnings¹⁵. By providing this information for the disabled pedestrians, it submits that it benefits them to access the sidewalk easily because they can choose in which information facilities that suit them and their needs personally. Also, if the government has a willingness to answer the need of the disabled people by providing the disabled pedestrian information for accessing their right to access public services, at the same time, the government fulfill the mandate of the article 28H paragraph (1) and paragraph (2) of 1945 Constitution.

Article 28H

- (1) *Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.*
- (2) *Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness.*

In this stage, it submits that by providing this such helpful information, it will decrease the barrier that restricts them from participating in society on an equal basis. In other words, they can live happily among the community because they can walk independently, confidently, and safely. This conducive situation also will affect their mind and health because they know that the government fulfills its right based on their needs.

The Government and Its Interference

Aiming to prevent the disabled people from not accessing their basic right properly, the government should ensure the enjoyment of human right for them by taking any necessary steps. Establishing cooperation with third parties, such as reputable universities (local and international), the research centers, private companies, and local government, to research and compile the standard of public facilities, uniquely accessible sidewalks for the disabled pedestrian is one of the necessary steps that the meant by this. Participation of all society is vital in this stage to create an inclusive environment for respecting the right of the disabled people. The interference of the government to conduct this environment can be started by submitting additional lesson in all schools and universities and educate the society about the importance of respecting the right of disabled people. The aim of this proposal is that by involving the community to comprehend the right of disabled people, society will understand about the importance of sidewalks sign for the blind or how vital the wider space in the sidewalks for the physically disabled. Accordingly, non-disabled people will respect the disabled people's right and it expects that they will not use the sidewalks for commercial purpose in the future.

Furthermore, it submits that the government shall such as mapping the pedestrians's needs and learning the behaviour of the pedestrians, especially the disabled pedestrians, and the society surroundings. By learning the people behaviour who mostly break the rule and use the sidewalks for illegal commercial purpose, the government will earn benefit such as knowing the exact result of punishment types, which also educate people at the same time to obey the rule and respect the disabled pedestrians rights, before constructing the laws. Thus the research results can be an integrated into the law enforcement which lead to effective mechanism as support component of the government's goals in term of fulfilling the disabled people right in accessing the sidewalks.

The law enforcement

To support the implementation as mentioned above, the government need to construct the law and firm in the law enforcement process. It means that if the society or some groups of people attempt to break the rules by using accessible sidewalks for commercial purposes, the government shall punish them directly without compromise. However, it also essential to bear in mind that during the process of law enforcement, non-disabled people right will not hurt by the arbitrary action. Thus, all the process shall meet the standard of the existing law, and all criminal activities shall be sentenced before the court. As a part of the necessary steps, the government must ensure that the law should support the government consideration for protecting and providing the right of disabled people to access the public facilities, including the available access. After creating the legislation that supports the inclusive system, the government must inform the people and firm in enforcing the law. By giving special treatment for the disabled people, it submits that it cannot be categorized as decreasing non-disabled people level in a different line. However, it should be seen as a part of the effort to create equality and fairness for all people.

CONCLUSION

To sum up, the studies found that there are many sidewalks which do not disable friendly. Those findings reveal that pedestrians cannot access the sidewalks safety and even there is no sidewalks provision upon the street for the disabled and non-disabled pedestrians. This paper offers some ideas in term of fulfilling the right to equality for the disabled people in accessing the sidewalk which in accordance with the regulations and the mandate of the constitution. It submits that building comprehensive agreements and cooperations which involving many parties between the government, experts, and professionals is one of vital move to build an integrated friendly public facilities, especially accessible sidewalks for disabled people. Educating the society about disabled rights and learning people and pedestrians's behaviour to know the effective punishment for those who break the laws are also an important policies to be taken by the government. Accordingly, the law enforcement will

¹⁵ Ibid, p. 24

run effectively because the types of punishments are well considered and scientifically proven. Thus, the government do not only meet the mandate of the constitution, international law, and the regulation, but also create new integrated public facilities by putting the disabled people's interest in the first place.

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